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UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

Epsilon System Solutions, Inc., Employer, and International Association of Machinists and Aerospace Workers, District Lodge 725, Petitioner.	No. 21-RC-257595 **OPPOSITION TO REQUEST FOR REVIEW**

In this case, the employer requests review of the Regional Director's Decision overruling the employer's objections to the election in a case in which the Union unanimously won the organizing vote. The sole objection raised by the employer is that the employer did not get to run the anti-union campaign it wanted because the COVID-19 outbreak limited its ability to have face-to-face meetings with the four individuals in question.

The grounds for review under 102.7(d) require the employer show that there is:

1) A substantial question of law or policy raised because of

   i. the absence of, or

   ii. a departure from officially reported Board precedent.

2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the right of a party.

3) The conduct of hearing or ruling made in connection with the preceding has resulted in prejudicial error, or

4) That there are compelling reasons for reconsideration of an important Board rule or policy.

None of the grounds for review are cited to in the employer's request or are supported by the facts and law of the case in question. The right to laboratory conditions during an election is a right afforded to employees as compared to unions or employers. Here, the employer is claiming there should be a re-run not because of any misconduct, or because of interference with the election, but rather that it did not get to run the anti-campaign that it wanted. There is no statutory right to campaign in any particular fashion, only a limitation on particular content as contained in Section 8(c), 29 U.S.C.§ 158 (c).

The Regional Director dismissed this objection without hearing. The Regional Director decided, pursuant to § 102.69(c), that the evidence contained in the offer of proof even if true would not constitute grounds for setting aside the election if introduced at hearing and, thus, no hearing on the objection was necessary or held. This is well within the discretion of the Regional Director.

When parties enter into a stipulated election agreement, they are required to abide by its terms. It is a contract and is treated as such. Intervening, unexpected circumstances do not negate or override the terms of a written contract. Buyer's remorse does not void a contract nor does a change in circumstances. As such, the later fact of limited access to the base after the employer already agreed to hold a mail ballot election in no way results in objectionable conduct

sufficient to overturn an election.[1] There is nothing in the Rules and Regulations of the Board that provide an unfettered right for an employer to hold face-to-face group meetings in advance of the union election. While it is accepted that an employer is not prevented from doing so, the Act does not require an employer to do so, and provides no provisions to protect an employer's right to do so. Nor does the employer's claim of "other business responsibilities" associated with pandemic response have any impact on whether the election was fairly run. To allow such a position to be credited would create mass uncertainty on the stipulated election process as there are regularly business interruptions and shifts in obligations in response to natural disasters, work place injuries and accidents, changes in regulatory schemes and the like. Ordering a rerun election in each of those circumstances would negate finality on a regular basis. Here, the employer agreed to a mail ballot. It cannot complain to the Board about its choice.

In short, there is no reason for review to be granted on this case. There is no allegation that there was misconduct during the election that could have affected the outcome. Nor are there particular grounds for review stated in the Request that fall within the Board's grounds for which review can be granted. Epsilon seems to be arguing that the laboratory conditions were destroyed by their inability to hold a face-to-face meeting[2]. Overall, the employer's failure to run the campaign that it wants does not destroy the laboratory conditions which look at whether employees were improperly influenced during the organizing process.

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[1] The stipulated agreement was fully executed and approved on March 16, 2020. Governor Newsom declared a state of emergency on March 4 and recommended a shelter in place as of March 15 for those who could be vulnerable to the virus. (https://projects.sfchronicle.com/2020/coronavirus-timeline/). Also on March 16, the Bay Area counties issued coordinated shelter in place orders. Based on the timeline, it is clear the employer knew of the potential for shelter in place orders to be issued prior to its execution of the agreement.

[2] It is disputed whether or not a face-to-face meeting could have been held. Under the shelter in place orders in place in Southern California and the State of California, the employer could have held a socially distant or outdoor meeting with the four employees. This is not a question of trying to reach hundreds or thousands of employees at a time, but rather four individuals, who were deemed essential employees, who could maintain social distanced in any room of reasonable size.

The request for review should be denied.

Dated: June 12, 2020

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

/S/ CAREN P. SENCER
By: CAREN P. SENCER

Attorneys for Petitioner International Association of Machinists and Aerospace Workers, District Lodge 725

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CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is1001 Marina Village Parkway, Suite 200, Alameda, California 94501.

I hereby certify that on June 12, 2020, I electronically filed the forgoing **OPPOSITION TO REQUEST FOR REVIEW** with the Executive Secretary of the National Labor Relations Board , by using the Board's Electronic Filing system.

On June 12, 2020, I served the following documents in the manner described below:

OPPOSITION TO REQUEST FOR REVIEW

☑ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from lhull@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Mr. William Cowen National Labor Relations Board Region, 21 Regional Director 312 N. Spring Street, 10th Floor Los Angeles, CA 90012 (213) 894-5254 General (213) 894-2778 Fax William.Cowen@nlrb.gov	Mr. Nathan Seidman National Labor Relations Board, Region 21 Assistant to the Regional Director 312 N. Spring Street, 10th Floor Los Angeles, CA 90012 (213) 634-6518 General (213) 894-2778 Fax Nathan.Seidman@nlrb.gov
Mr. Moises RuizMarquez National Labor Relations Board, Region 21 Board Agent 312 N. Spring Street, 10th Floor Los Angeles, CA 90012 (213) 634-6506 General (213) 894-2778 Fax Moises.RuizMarquez@nlrb.gov	Mr. James J. McMullen Gordon Rees Scully Mansukhani LLP 101 West Broadway, Suite 2000 San Diego, CA 92101 (619) 230-7746 General (619) 696-7124 Fax JMcMullen@grsm.com Attorney for Employer

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on June 12, 2020.

Lara Hull